

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARYL M. PENN and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, Mich.

*Docket No. 96-2642; Submitted on the Record;
Issued August 26, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability commencing June 23, 1995 causally related to his June 19, 1995 employment injury.

On June 19, 1995 appellant, then a mail handler, filed a traumatic injury claim alleging that on that date he sustained a swollen left knee while pulling a steel bin with sacks on it. Appellant stopped work on June 19, 1995. He was treated at the employing establishment medical unit where he was diagnosed as having a strain of the left knee.

The Office of Workers' Compensation Programs accepted appellant's claim for a left knee sprain.

Appellant returned to a light-duty position on June 20 and 21, 1995 which required him to work while sitting down. Appellant stopped work on June 21, 1995 and filed a claim (Form CA-2a) on July 7, 1995 alleging that he sustained a recurrence of disability on June 23, 1995.

On July 7, 1995 appellant rejected the employing establishment's offer of a limited-duty position of mail handler which involved casing mail while sitting down. In its offer, the employing establishment also indicated appellant's work restrictions which included no lifting, standing, walking, climbing, kneeling, bending, and stooping.

On July 10, 1995 the employing establishment requested that Dr. Silas Cardwell, a Board-certified internist and appellant's treating physician, determine whether he could perform the offered limited-duty position, which involved the following:

"Sit down work only. May sit/stand at will for comfort and personal needs. No pushing, pulling, bending, kneeling, twisting or prolonged standing. May elevate left leg as needed. While seated, may sort/distribute mail to a letter case. Mail may be brought to case by another employee."

On July 13, 1995 Dr. Cardwell approved the employing establishment's offer of employment. On September 12, 1995 Dr. James Freeman, a Board-certified internist and emergency medicine physician, also approved the employing establishment's offered limited-duty position.

By decision dated September 19, 1995, the Office found that the medical evidence of record did not establish that appellant sustained a recurrence of disability beginning June 21, 1995 causally related to the June 19, 1995 employment injury.

In an October 31, 1995 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence. By decision dated January 31, 1996, the Office denied modification of the September 19, 1995 decision.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that he sustained a recurrence of disability commencing June 23, 1995 causally related to his June 19, 1995 employment injury.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.¹ As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.²

In the present case, appellant has not established a change in the nature and extent of his injury-related condition or a change in the nature and extent of the light-duty requirements. Dr. Cardwell's June 26, 1995 disability certificate indicated that appellant had a left knee injury and that appellant could return to work on June 27, 1995 with no walking, carrying and standing restrictions. Dr. Cardwell's July 7, 1995 disability certificate revealed that appellant had traumatic arthritis of the left knee and that appellant was disabled until July 31, 1995. Dr. Freeman's July 25, 1995 disability certificate indicated that appellant had a possible meniscal tear of the left knee and that appellant's return to work would depend on magnetic resonance imaging (MRI) scan results. Dr. Freeman's September 19, 1995 disability certificate revealed that appellant had a possible meniscal tear of the left knee and that appellant could return to work on September 14, 1995. A September 12, 1995 disability certificate of Dr. B. Silich revealed that appellant had a left knee strain and that appellant could return to work on July 14, 1995. Dr. Freeman's undated prescription provided that appellant required physical therapy for possible meniscal injury of the left knee which involved quad/hamstring strengthening. These disability certificates and prescription failed to address how appellant's continuing disability beginning June 23, 1995 was related to the June 19, 1995 employment injury.

¹ *Terry R. Hedman*, 38 ECA 222, 227 (1986).

² *Id.*

Dr. Cardwell's June 26 and July 5, 1995 duty status reports (Forms CA-17) indicated that appellant could return to work with restrictions. These reports are insufficient to support appellant's claim because they failed to address whether appellant had a recurrence of disability causally related to the June 19, 1995 employment injury. Dr. Cardwell's August 15, 1995 medical report revealed a history of the June 19, 1995 employment injury and his findings on physical examination. Dr. Cardwell stated that appellant should remain off work and that appellant was totally disabled until the magnetic resonance imaging scan results were known. Dr. Cardwell further stated that the discrepancy in his previous report was due to a lack of communication between himself and Dr. Freeman. Dr. Cardwell's October 26, 1995 medical report revealed a history of the June 19, 1995 employment injury. Dr. Cardwell stated that appellant was advised to stay off work until he saw Dr. Freeman due to the swelling, tenderness, limited range of motion and decreased weight bearing on that extremity. Dr. Cardwell also stated that it was believed that further walking on that extremity might worsen the internal derangement of that knee. Dr. Cardwell further stated that appellant was advised by himself and Dr. Freeman to stay off the knee until MRI scan was done because appellant could not bear weight on that extremity and getting to work might cause some difficulty. Dr. Cardwell then stated that "I am unaware of the job offer from injury compensation; but this statement, I gather, will answer those questions. Again, it was determined that he was unable to work with that leg from June 19, 1995 until September 12, 1995, at which time it was recommended that he go back to work with restrictions." Dr. Cardwell failed to provide any medical rationale explaining how appellant's disability was due to the June 19, 1995 employment injury after he approved the employing establishment's offered position on July 13, 1995.

In a July 26, 1995 medical report, Dr. G. Theodoulou, a Board-certified orthopedic surgeon, indicated a history of the June 19, 1995 employment injury, and appellant's employment with the employing establishment and medical treatment. Dr. Theodoulou further indicated his findings on physical and objective examination. Dr. Theodoulou diagnosed internal derangement of the left knee and possible tear of the medial meniscus. Dr. Theodoulou stated that once he had the MRI scan results, he would be able to rule out the possibility of medial meniscus. Dr. Theodoulou further stated that in the meantime, appellant could return to work with restrictions which included sitting 75 percent of the time and avoidance of climbing, deep squatting and kneeling pending a review of the MRI scan. In a September 1, 1995 supplemental medical report, Dr. Theodoulou opined that based on the MRI results, appellant had an internal derangement of the left knee with a Baker's cyst and degeneration of the posterior horn of the medial meniscus. Dr. Theodoulou noted appellant's medical treatment and stated that in the meantime, appellant could return to work with restrictions which included avoiding prolonged standing and walking, kneeling, climbing and squatting, and no lifting more than 20 pounds for four weeks. Dr. Theodoulou also stated that if appellant's symptoms subsided, then appellant could resume his regular work, but if not, then appellant might need arthroscopic surgery. Dr. Theodoulou's reports indicated that appellant was capable of working in a position with restrictions that were included in the employing establishment's offered position.

The September 12, 1995 report of Sharon Forte, a registered nurse, revealed a history of appellant's employment, the June 19, 1995 employment injury, medical treatment and family, her observations of Dr. Freeman's examination of appellant, and recommendations regarding

management of appellant's case. Ms. Forte's report is of no probative value inasmuch as a nurse is not considered to be a physician as defined in the Federal Employees Compensation Act,³ and thus, Ms. Forte cannot render a competent medical opinion.

Dr. Freeman's undated hospital report indicated that appellant had a possible medial meniscus injury and appellant's medical treatment. Dr. Freeman's report is insufficient to establish appellant's burden because it failed to address a causal relationship between appellant's knee condition and the June 19, 1995 employment injury.

As no further probative medical evidence supporting appellant's alleged recurrence of disability was submitted, he has failed to establish that he sustained any compensable recurrence of disability causally related to his June 19, 1995 employment-related left knee sprain injury.

The January 31, 1996 and September 19, 1995 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
August 26, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

³ 5 U.S.C. § 8101(2)